

**August 1, 2013**

**Comments of the Independent Energy Producers Association on  
CARB's Discussion Draft for Potential Amendments to the  
Regulation for the Mandatory Reporting of Greenhouse Gas Emissions  
Released July 2013**

The Independent Energy Producers Association appreciates the opportunity to comment on the California Air Resources Board's Potential Updates to the California Regulation for the Mandatory Reporting of Greenhouse Gas Emissions ("Discussion Draft") and on the Mandatory Reporting Workshop for Electric Power Entities, held on July 23, 2013. IEP's comments below focus on CARB's proposal to calculate emission rates for system power that is above the default rate. IEP's goal is to ensure that parties cap and trade (C&T) carbon obligations are transparent, accurate, and do not foster leakage and/or contract shuffling.

On July 10, 2013, IEP submitted a letter to Chair Nichols (see attached) raising concerns regarding the practical use of the default emission factor. IEP is concerned that the default emissions factor, which has been set at a level equivalent to a relatively efficient natural gas facility, is being used to mask higher emitting resources delivered into California. IEP is concerned that the current methodology creates a clear incentive for a party with a portfolio of relatively high emitting base load (coal) resources to categorize its whole portfolio as "unspecified" in order to create a competitive advantage by avoiding its full carbon allowance obligation. This raises questions regarding the fair treatment of in-state vs. out of state generation as well as the integrity of the cap and trade program in general. In our July 10<sup>th</sup> letter, IEP requested that the CARB correct these protocols which may be fostering both leakage and resource shuffling in the Cap and Trade program.

CARB is now seeking to address this issue in its Discussion Draft on Potential Amendments to the Mandatory Reporting Regulation. As IEP understands the proposal, the CARB would calculate a "system" specific emission factor in the case that the imports originating from a particular "system" are above the default emissions factor.

IEP supports CARB's proposal to reconsider the emissions rates of imports delivered into California that are not accurately represented by the default emission rate. More transparency and accuracy is always better. However, CARB's proposal as currently drafted leaves a number of unanswered questions for stakeholders to consider including the following:

1. What qualifies as a "system" for which a "systems emissions factor" will be calculated?
2. How will "system power," "system power imports," "system power emission factors," be defined?
3. How will the default emissions factor be applied going forward?
4. To whom will the default emissions factor apply going forward?

It seems that CARB's proposal to calculate a system emissions factor for imports above the default emission rate may be similar to the methodology used to calculate the emissions factor for Asset Controlling Suppliers. To the extent it makes sense, CARB may want to consider a similar methodology to calculate the emissions factors for "system" imports as is used for Asset Controlling Suppliers. In this context, IEP would appreciate clarity on the following:

1. How is this proposal different from the concept applied to Asset Controlling Suppliers?
2. Will system emission factors be determined in a similar fashion to the Emission Factors for Asset Controlling Suppliers?

In addition, IEP would like to point CARB to the paper Downstream Regulation of CO2 Emissions in California's Electricity Sector, James Bushnell, et al, (Energy Institute at Haas, Working Paper Series, Berkeley, CA, January 2013) which observes that setting the default emissions factor equal to a coal plant will largely eliminate the incentive to claim imports at the default rate.<sup>1</sup> This approach will create an incentive for entities to specify the power that they are bringing into California and enable CARB to have the most accurate picture of what resources are actually serving California load. In addition, this approach avoids the problem associated with using the average which allows entities to mask the true emissions of the power that is imported into California; an advantage that is not afforded to in-state generation.

Concerns have been voiced that the CARB may be precluded from imposing a more accurate default emissions factor on imports due to Commerce Clause restrictions. IEP believes these concerns are unfounded for a number of reasons. First, under its current rules, CARB has imputed an emission factor for unspecified power, including imports. Any efforts taken by CARB to obtain more accurate specification of the carbon content of all resources, including imports, would not necessarily raise Commerce Clause concerns that don't already exist. Second, consistent with how the entire C&T program has been designed to mitigate Commerce Clause claims, obligated entities under the C&T Program are identified as so-called First Deliverers, i.e. the owners of power once it enters the state's jurisdiction. Treating all First Deliverers in a comparable fashion is paramount; and, CARB would be achieving this end by enabling First Deliverers of imported power to either (a) report direct emissions associated with imports or (b) voluntarily choose to accept the imputed default emissions rate. In either case, CARB's interest in perfecting the default emissions factor to more accurately reflect the carbon intensity of all resources, including imported power, would not raise Commerce Clause concerns as it serves the goal of treating all generation resources in a non-discriminatory fashion. Indeed, one might argue that not enabling in-state generation the same choice, i.e. direct emissions reporting or an imputed emission factors, has the effect of discriminating against in-state generation.

In conclusion, IEP supports and appreciates CARB's proposal to address system imports above the default rate as a step in the right direction. It is important that we get these details right to ensure the integrity of the cap and trade program, minimize contract shuffling and leakage, and ensure that the determination of a default emission factor does not convey competitive advantages between in-state and out-of-state resources. IEP appreciates the

---

<sup>1</sup> Energy Institute at Haas, "Downstream Regulation of CO2 Emissions In California's Electricity Sector," James Bushnell, et al, January 2013, p. 26

opportunity to comment on CARB's Discussion Draft for the Potential Amendments to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions. IEP looks forward to working with CARB staff as these issues unfold.

Respectfully Submitted,



Steven Kelly  
Policy Director  
Independent Energy Producers Association  
1215 K Street, Suite 900  
Sacramento, CA 95814  
(916) 448-9499  
[steven@iepa.com](mailto:steven@iepa.com)



Amber Riesenhuber  
Policy Analyst  
Independent Energy Producers Association  
1215 K Street, Suite 900  
Sacramento, CA 95814  
(916) 448-9499  
[amber@iepa.com](mailto:amber@iepa.com)